IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO: 127 OF 2002 (M/S)

Yaswant Singh son of Sri Yaspal Singh, resident of village Bharatpur, P.O. Kunda, Tehsil Kashipur, District: Udham Singh nagar.

---------Petitioner.

Versus

1. Smt. Kanchan Chauhan wife of Sri Rakesh Kumar, resident of C- 541, Nes Avas Vikas Colony, town Kashipur, district udham Singh Nagar.
2. Additional District Judge/Fast Track Court, Kashipur, District Udham Singh Nagar.

------Respondents

Sri Sudhir Kumar, learned counsel for petitioner.
Sri S.K. Mandal, counsel for respondent No. 1 & Standing Counsel for Resp. No.2.

Dated : April 17, 2006.
HON'BLE RAJESH TANDON, J.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 01.03.2002 passed by respondent no.2 in Civil Revision No.60 of 2001.

Briefly stated, the petitioner has filed a suit under section 6 of the Specific Relief Act praying for the possession of the premises claiming for a decree of dispossession of the defendant on the ground that he was in possession from 01.02.1999 @ Rs.600/- per month and he has been wrongly dispossessed.

The property in dispute has been sole by Akhtar Jahan to the defendant on 28.08.1999.

A written statement has been filed by the defendant where the plaint averements have been denied. It was denied that there was any relationship of landlord and tenant between the parties. On the basis of the written statement issue No.4 was framed as to whether the court fee paid in the suit is sufficient or not. In para 20 of the written statement of defendant has raised the following plea:

''20. यह कि वादी को कोई विनायदावी प्रतिवादी के खिलाफ पैदा नहीं हुई और ना ही वादी प्रतिवादी का हरगिज भी किरायेदार नहीं है और ना ही कभी उसका किरायेदार था। ना ही कभी उसे बेदखल किया है वाद न्यायालय के क्षेत्राधिकार से बाहर है न्यायालय को वाद सुनने का अधिकार नहीं है।

21. यह कि दावे का मूल्यांकन कम दिखाया गया है वादी प्रतिवादी का किरायेदार नहीं है प्रतिवादी जो मकान का मालिक है उसकी दुकान की बेदखली के लिये दुकान की कीमत 60,000/– रूप्ये पर कोर्ट फीस अदा करना चाहिए।

The trial court has recorded the finding in favour of the plaintiff holding that the court fee paid is sufficient as the suit has been filed on the ground

of relationship of landlord and tenant. The defendant has preferred a revision. The revisional court has recorded a finding that since it is a suit under section 6 of the Specific Relief Act, and there appears to be no relationship of landlord and tenant between the plaintiff and the defendant, the valuation has to be made in accordance with the market value of the property.

Counsel of the petitioner has referred Section 7(xi) of the Court Fees Act. It reads as under:

"7(xi) In the following suits between landlord and tenant-

(a) for the delivery by a tenant of the counterpart of a lease;

(b) to enhance the rent of a tenant having a right of occupancy;

© for the delivery by a landlord of a lease;

(cc) for the recovery of immovable property from a tenant including a tenant holding over after the determination of a tenancy;

(d) to contest a notice of ejectment;

(e) to recover the occupancy of immovable property from which a tenant has been illegally ejected by the landlord;

(f) for abatement of rent;

(g) for determination of rent; and

(h) for determination of rent-

according to the amount of the rent of immovable property to which the suit refers, payable for the year next before the date of presenting the plaint, except in the case of suits falling under clause (h) in which according to twice the amount claimed by the plaintiffs to be the annual rent."

As will appear that Section 7(xi) relates to the suits simpliciter where the landlord files a suit against the tenant for the delivery of possession by a tenant. However, the suit under section 6 of the Specific Relief act is not covered. The landlord in his written statement has disputed that the4 plaintiff was a tenant and, as such, unless the plaintiff is able to prove that he was a tenant at any point of time the plaintiff can not be permitted to save from the

clutches of the court fees and he has to pay according to the valuation of the property.

The revisional court has recorded a finding that original receipt has not been filed with regard to the tenancy rights of the plainitiff and, as such, the relationship of landlord and tenant can not be proved by any means and, as such, the suit does not fall under section 7(xi) of the Corut Fees Act.

Counsel for the petitioner has submitted that so far as Rs.60,000/- valuation is concerned, the court has not adjudicated upon the question as to whether the valuation is Rs.60,000/- or any other valuation. A copy of the sale deed of October, 1999 showing the valuation of Rs.80,000/- is on record. The suit has been filed in the year 2000. The petitioner has not given any other evidence to disprove the valuation given by the defendant and, as such, since the petitioner has not led any other evidence that the valuation is lesser than Rs.60,000/- the valuation given by the defendant, therefore, has taken to be true.

The petitioner has referred the judgment reported in **AIR 2002 Supreme Court 233 Kamaeshwar Kishore Singh Vs Paras Nath Singh and others** where it has been observed by the Apex court that the court fee has to be paid on the plaint as framed and not on the plaint as it ought to have been framed. The observations are quoted below:

"It is well settled that the court fee has to be paid on the plaint as framed and not on the plaint as it ought to have been framed unless by astuteness employed in drafting the plaint the plaintiff has attempted at evading payment of court fee or unless there be a provision of law requiring the plaintiff to value the suit and pay the court fee in a manner other than the one adopted by the plaintiff."

The Apex Court in the aforesaid observations has pointed out that the averements made in the plaint has taken to be true unless there is a provision of law requiring the palinitiff to value the suit and pay the court fee in a manner other than the one adopted by the plaintiff. In the present case

in the written statement the defendant has pointed out that since it is not a suit between the landlord and tenant and, therefore, the value of the suit has been wrongly given by the plaintiff on the basis of the landlord and tenant relationship and, therefore, the Apex Court has rightly pointed out that unless there is a provision of law requiring the plaintiff to value the suit and pay the court fee in a manner other than the one adopted by the plaintiff and, as such, the defendant having pointed out that the suit does not fall under section 7(xi) of the Court Fees Act, therefore, the revisional court has rightly passed the order directing the plaintiff to pay the court fees on the basis of valuation and not on the basis of Section 7(xi) of the Court Fees Act.

In view of aforesaid findings I do not find any infirmity in the order passed by the revisional court under Article 226/227 of the Constitution of India.

However, it is made clear that in case the court comes to the conclusion that there has been a relationship of landlord and tenant between the plaintiff and the defendant and further the plaintiff

has been illegally ousted from the premises and further the plaintiff has been paying the rent @ Rs.600/- per month to the defendant, the plaintiff will be entitled for the refund of the court fees paid by him.

The writ petition, therefore, lacks merit and is liable to be dismissed.

Writ petition is dismissed.

(Rajesh Tandon, J.)

17.04.2006.
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